

The Lawyers Committee on Wireless Radiation and Children's Health

Swankin & Turner
Washington, DC

Law Office of Robert J. Berg
Scarsdale, NY

Davis, Levin, Livingston
Honolulu, HI

Campanelli & Associates, P.C.
Merrick, NY

Markham & Read
Boston, MA

Harry V. Lehmann, P.C.
Novato, CA

Law Office of Gregg R. Lien
Tahoe City, CA

Winter, 2022

Dear School Administrators and Counsel,

The rapid proliferation of wireless technologies has precipitated a revolution in education and a shift to widespread use of technology-based curricula. At the same time, scientists and medical professionals are documenting serious risks to human health from exposure to radiofrequency radiation (RFR)¹ emitted from all wireless devices, even at levels previously thought safe, with a particular concern for its impact on children. This dichotomy informs our efforts to take precautions to protect the most vulnerable among us, and to examine the legal responsibilities of school administrators and others in positions of authority to take preemptive action to prevent foreseeable harm.

The goals of this legal memorandum are: a) to inform you of the emerging science documenting the serious risks of chronic exposure to RFR; b) to explore the most relevant government regulations and tort cases as they relate to schools and their corresponding responsibilities for protective action; c) to focus on the potential legal consequences of exposing children to RFR from wireless devices (cell phones, routers, tablets, etc.) within the classroom and from cell towers located on or near school property, where exposure for children, teachers, and staff may be penetrating, intimate, and cumulative; and d) to chart a clear path of collaboration among all parties in creating a "21st Century Resilient Classroom" employing mitigation techniques and state-of-the-art wired technology where feasible.²

Section I. The Scientific Basis for Heightened Vigilance with Children

A substantial body of peer-reviewed scientific studies and clinical medical evidence has built a *prima facie* legal case of heightened vigilance and fiduciary responsibility for school administrators, school boards, parents, and government officials toward children in schools.

- **Biological effects of RFR on children.** A number of serious illnesses and a range of chronic symptoms are closely associated with RFR exposure for a small but

¹ There are actually three domains of radiation risks, well-documented in the extensive scientific and medical literature. These include RFR, Extremely Low Frequencies (ELF), and Magnetic Fields. In this memo we focus on RFR, although the cumulative consequences for the health of children of each of these domains, individually and especially in aggregate, raises even more significant legal issues.

² For more information, please visit www.TechSafeSchools.org/legal.

Disclaimer — This letter is intended for educational purposes only and is part of a continuing legal education initiative. It is not intended to offer nor should be construed as legal advice. Concerned parties should consult with their own counsel on matters raised herein.

growing percentage of people, and children are particularly vulnerable. In many cases, when the sources of RFR are mitigated or removed, these adverse symptoms are relieved, and in some instances, completely disappear. The available scientific literature and clinical medical record are more than sufficient to establish a **basic duty of care** toward children regarding harms that are clearly **foreseeable and preventable**.

- **Why are children more vulnerable to RFR than adults?** The increased vulnerability of children to environmental exposures is due primarily to their immature and rapidly developing physiology. Children possess a high density of stem cells that are sensitive to RFR, rendering them especially susceptible to constant exposure. They have high levels of extracellular water throughout their bodies that is more easily penetrated by RFR, and radiation penetrates deeper and more intensely into children's brains due to their thinner skulls and unique physiology, and developing brains are more sensitive to synaptic interference from RFR.
- **How is exposure to RFR manifested in children?** The most common illness reported from exposure to RFR is Electromagnetic Hyper-Sensitivity (EHS). EHS is recognized as a serious illness by the World Health Organization, the United States Access Board, Department of Labor and others. The most common symptoms of EHS including headaches, fatigue, concentration difficulties, dizziness, nausea, heart palpitations, and digestive disturbances. Other reported impacts include neuropsychiatric (behavioral) effects including anxiety, depression, brain fog and cognitive impairment.

Section II. School Administrator's Fiduciary Duty of Care

The fiduciary duty of school administrators to parents and children arises from national and state policies and obligations to deliver safe and supportive learning environments, as well as the general law of fiduciaries. School superintendents and heads serve as *locus parentis* and are required by law to safeguard the interests of children entrusted to their care.

California Civil Code §1573, for example, defines a fiduciary relationship as “any relation existing between parties to a transaction wherein one of the parties is in duty bound to act with the utmost good faith for the benefit of the other party.” California law expressly provides for tort damages, including punitive damages, which may be recovered for an intentional breach of fiduciary duty under California Civil Code Section 3333 and California Civil Code Section 3294. Other states have similar laws.

What is a School Administrator's Fiduciary Duty to Deliver Safe Learning Environments?

Disclaimer — This letter is intended for educational purposes only and is part of a continuing legal education initiative. It is not intended to offer nor should be construed as legal advice. Concerned parties should consult with their own counsel on matters raised herein.

The fiduciary duty of school administrators can be analyzed into distinct and separate duties, with corresponding legally recognized rights of parents, children, and teachers.

- **Duty of heightened vigilance and precaution.** School administrators have a duty of heightened vigilance, especially when they are well informed of the **foreseeable risks and preventable harms.**
- **Duty to be informed.** From this basic responsibility derives the further duty of inquiry to investigate and to become better informed.
- **Duty to inform and warn parents.** Administrators have a legal obligation as fiduciaries to warn parents and caretakers of all feasible risks.
- **Duty to secure informed consent.** Administrators have a fiduciary obligation to secure **informed consent** from parents to permit their children to be wirelessly irradiated while in school.
- **Duty to secure certification of safety from telecoms and full disclosure.** Administrators have a fiduciary obligation to require purveyors of wireless technologies and devices to certify that their products are safe, especially for children and teachers in school environments.
- **Duty to demand indemnification and insurance or reinsurance.** Administrators have a responsibility to require wireless providers to present **proof of insurance** to support contractual indemnification and compensation for RFR-related harms. The liability of RFR exposure must not fall upon their own schools, and parents should not bear personal medical and other costs.
- **Duty to protect disabled and special needs children.** Administrators have a fiduciary and statutory duty to protect especially vulnerable children, including those who are disabled, have special educational needs, are suffering from EHS, belong to minority communities, or are economically disadvantaged..
- **Duty to be informed of no standard.** Administrators must act protectively, recognizing that the present FCC thermal standard does not reflect the recent scientific evidence of biological effects from RFR exposure. As a matter of law, compliance with a government regulation or standard does not necessarily provide a shield against tort liability.
- **Duty to monitor and measure exposure levels.** Administrators have an obligation to monitor the environments they are pledged to protect by regularly measuring RFR levels in schools.
- **Liability for retaliation against parents.** Administrators must inform themselves of the legal liabilities they face for any attempts to retaliate against parents who express concerns over the exposure of their children to RFR contamination.

Disclaimer — This letter is intended for educational purposes only and is part of a continuing legal education initiative. It is not intended to offer nor should be construed as legal advice. Concerned parties should consult with their own counsel on matters raised herein.

- **Children’s and parents’ right to know.** Parents have a right to know if schools are exposing their children to serious health risks to which they have not consented. Some states have enacted parents’ right to know statutes. (See, for example, Minnesota’s pesticide statute.) The right to be free from RFR contamination is basic and constitutional, and touches directly the right of all citizens, in this instance our children, to enjoy and not be deprived of good health, life, and liberty.

Section III. Strong Federal and State Policy to Safeguard Learning Environments

The manufacturers and distributors of wireless technologies are currently regulated by an FCC policy that these corporations themselves have designed, ignoring the growing evidence of harm to human health and the environment.

Fortunately, the U.S. Constitution and numerous court decisions recognize that the policy of one federal agency must pay deference to, and be harmonized with, other important federal laws and policies. This body of law has direct bearing on the **critical decision** of school administrators to permit the introduction of RFR-emitting products into school environments.

- **National and state policies for safe learning environments.** There are strong federal and state laws and policies in place, and many federal and state agencies have been established to ensure safe learning environments in schools. Introducing wireless technologies in schools, regardless of the consequences, is directly in conflict with these policies, laws and programs.
- **Protecting disabled children and children with special needs.** Strong and well-established federal policies are in place to protect disabled children and children with special educational needs. These successful laws and programs cannot be arbitrarily ignored because of an FCC policy favoring the wireless industry.
- **Americans with Disabilities Act (ADA).** The ADA offers a shield for school administrators to prevent and to abate RFR contamination from wireless technologies. It requires **reasonable accommodation** when an actual injury, or when an immediate threat of injury has occurred to a disabled person. RFR-related illnesses and conditions, whether based on special sensitivities (EHS) or pre-existing conditions aggravated by RFR exposure, can qualify as recognized disabilities under the statute. Endangerment of people with disabilities is recognized as a civil rights violation, comparable to similar discriminations based on race, age, and sex.
- **Data privacy and security.** Federal law and an increasing number of state laws have recently been enacted to ensure data privacy and cybersecurity. Wireless technology is now recognized to be so inherently insecure and vulnerable to hacking and other intrusions that the problem has been elevated to a national security concern, and several task forces have provided detailed recommendations on the high vulnerability to the nation of cyber-insecurity. Protection of the

Disclaimer — This letter is intended for educational purposes only and is part of a continuing legal education initiative. It is not intended to offer nor should be construed as legal advice. Concerned parties should consult with their own counsel on matters raised herein.

privacy and security of databases concerning children and their parents must be a high priority of school administrators. This issue is not generally disclosed by purveyors of wireless products and technologies.

Section IV. Potential Criminal and Civil Liability of Wireless Purveyors

The controversies over the health risks of RFR contamination must be viewed in the context of the long history of litigation over other public health injuries, where courts and juries have recognized huge damage awards to victims. A discussion of these diverse fields, including: lead in drinking water and lead paint, asbestos, Roundup, mold, special allergies, tobacco, cell phones, and cancer can be found at www.TechSafeSchools.org/legal. As the issues are often common in cases around the world, precedents are being established in other countries that courts in the United States are likely to note and apply. These precedents are transforming the administrative landscape and establishing civil and even criminal liability for knowing and willful exposure of children to RFR risks.

Reaching a Legal Tipping Point

As science moves inexorably toward a better understanding of the role of non-ionizing radiation and magnetic field exposure on children's biological systems, and the blanket of regulatory protection around the wireless industry begins to fray, the liability of school administrators and school boards will increase.

- **Absence of a science-based RFR standard.** The FCC is allowing the wireless industry a *carte blanche* to operate under an outdated thermal standard that ignores biological harm from both peak and cumulative exposures, and is unsupported by the scientific and medical evidence. A principal source upon which the FCC is relying is the International Commission on Non-Ionizing Radiation Protection (ICNIRP). ICNIRP's recommended standard has been deemed inadmissible by two Italian courts that have held the studies on which it is based lack scientific credibility and are fatally flawed due to conflicts of interest. There is widespread evidence that large numbers of people in the U.S. and around the world, including children, are being seriously harmed, despite statements by the wireless purveyors that they are in compliance with the FCC's standard.
- **Environmental Health Trust/Children's Health Defense v. FCC.** In a recent successful lawsuit brought by two non-profit organizations, the FCC has been ordered by the DC Circuit Court of Appeals to re-evaluate its twenty-five year old thermal-based standards in light of new evidence suggesting that RFR is having a detrimental impact on children and the environment, even at levels currently deemed "safe." Schools that have been relying on the present FCC standard may soon find themselves in legal jeopardy.
- **Americans for Responsible Technology (ART) FDA petition for expedited rulemaking.** The purpose of this administrative action is to require the FDA in

Disclaimer — This letter is intended for educational purposes only and is part of a continuing legal education initiative. It is not intended to offer nor should be construed as legal advice. Concerned parties should consult with their own counsel on matters raised herein.

cooperation with the EPA to promulgate science-based RFR standards. The FCC has already acknowledged that it lacks expertise on health. If the FDA adopts reasonable health standards, the FCC's defense of its inadequate and unenforced RFR standard will collapse.

- **The regulatory compliance defense.** Given the patent deficiencies of the present FCC standard, the legal question is whether purveyors of wireless technologies – or school administrators – can rely on their compliance as a defense to tort actions, claiming damages? In fact, the *Restatement of Torts* and other authorities indicate they cannot.³ This would seem especially so in the present case where there is no standard at all for children. A *carte blanche* is not a standard.
- **Federal preemption.** The scope of FCC federal preemption over the powers of states to protect the health and safety of their citizens is highly controversial and currently being tested in various lawsuits. Although one 2020 federal district court in *Cohen v. Apple* has ruled that the Telecommunications Acts of 1934 and 1996 preempt state tort law in a case concerning false claims by cell phone manufacturers, this decision is not controlling on other federal courts; nor does it preempt other federal statutes.

The Winning Case

We believe that as the scientific evidence of harm from RFR continues to mount, the courts will eventually rule to protect children and faculty in schools from dangerous RFR exposure. The defendants will be school administrators who have brushed aside the warnings of experts, and allowed increasing amounts of wireless technology to be employed in the classroom with full knowledge of the special vulnerabilities of children to RFR exposure.

A jury will reasonably conclude that the potential harms were foreseeable and preventable, that adequate notice had been served as required under the Americans with Disabilities Act and that a school administrator's decision to ignore a request for reasonable accommodation was made with full knowledge, recklessly and willfully, indifferent to the safety of children within his or her care. A case for punitive damages, along with attorney's fees and costs under the statute, is strong.

Section V. Tragic Choices vs. False Choices: Reconciling Sound Business with Conscience

³ <https://news.bloomberglaw.com/product-liability-and-toxics-law/a-new-and-old-twist-on-preemption-the-regulatory-compliance-defense>

Disclaimer — This letter is intended for educational purposes only and is part of a continuing legal education initiative. It is not intended to offer nor should be construed as legal advice. Concerned parties should consult with their own counsel on matters raised herein.

This Memorandum and the TechSafe School project rely on the premise that school administrators, teachers, staff, parents and students are natural allies. Together they share an opportunity to collaborate creatively in innovating the *21st Century Resilient Classroom*. Indeed, to take the same logic to the next step, it is not inconceivable that the more imaginative and socially conscious telecom companies will themselves decide to innovate safer solutions that will contribute significantly to this fundamental goal.

The *21st Century Resilient Classroom* does not demand a tragic choice between children's and teachers' safety and security versus wireless access to the Internet. It is a false choice based on narrow thinking. The plain economic benefits to schools of implementing safe learning environments (happy children, attracting better teachers, reducing sick leave, etc.) and avoiding significant, uninsurable liability, far exceed the subsidies now being dangled by State Departments of Education, and other financial enticements by the wireless purveyors. Simply by hard-nosed business calculation, the protective course makes practical sense.

But this is not, must not, be a cold business decision. It is also a matter of conscience. If school administrators will look deeply into their hearts, and take wise counsel, the immediate opportunity to provide safe learning environments for all our children will become clear.

Sincerely,

Julian Gresser,
James Turner
Swankin & Turner

Andrew Campanelli
Campanelli & Associates, PC

John Markham
Markham & Read

Harry V. Lehman
Law Office of Harry V. Lehman, PC

Mark Davis
Davis, Levin & Livingston

Robert J. Berg
Law Office of Robert J. Berg

Gregg Lien
Law Office of Gregg R. Lien

Disclaimer — This letter is intended for educational purposes only and is part of a continuing legal education initiative. It is not intended to offer nor should be construed as legal advice. Concerned parties should consult with their own counsel on matters raised herein.